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ZNR UUUUU ZZH
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FM AMEMBASSY ABUJA
TO RUEHC/SECSTATE WASHDC PRIORITY 1506
INFO RUEHOS/AMCONSUL LAGOS PRIORITY 8316
RUEHGV/USMISSION GENEVA PRIORITY 0130
RUCPDO/DEPT OF COMMERCE WASHDC PRIORITY
RUEATRS/DEPT OF TREASURY WASHDC
RUEAWJA/DEPT OF JUSTICE WASHDC

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DEPARTMENT PASS TO USTR (AGAMA)
TREASURY FOR DPETERS
USDOC FOR 3317/ITA/OA/KBURRESS
USDOC FOR 3130/USFC/OIO/ANESA/DHARRIS
USDOC FOR USPTO - PAUL SALMON
USDOJ FOR MARIE-FLORE KOUAME

E.O. 12958: N/A
TAGS: [ECON](#) [KIPR](#) [ETRD](#) [PGOV](#) [NI](#)
SUBJECT: NIGERIA: IPR CRIMES WORKSHOP WELL-RECEIVED

SENSITIVE BUT UNCLASSIFIED - HANDLE ACCORDINGLY

¶1. (SBU) Summary. A three-day workshop on investigative skills for IPR crimes had energetic and high participation from Nigerian enforcement officials in Abuja. The course was successful in raising awareness as to the seriousness of IPR crimes, providing detailed investigative techniques for handling IPR cases from inception through prosecution, engendering cooperation among the respective Nigerian government (GON) agencies, and promoting good relations between IPR interest groups and Nigerian Government officials. The workshop also revealed recurring problems with Nigeria's enforcement system, which include IPR laws that hamper the GON's investigative authority in the trademark area (for goods other than medicines which are covered by food and drug regulations), lack of cooperation among GON officials, and lack of expertise among magistrates and judges. It also revealed that the EFCC is the agency most equipped to tackle more advanced criminal IP cases. Embassy hopes that further INL funding will be granted to continue this type of program with magistrates and judges and to reinforce the basics of those skills with a more advanced program. This message details other next steps needed to further bolster IPR protection. End Summary.

¶2. (U) The workshop, held in Abuja from November 6 to 8, was funded by INL and presented in cooperation with the U.S. Departments of Justice, Homeland Security (ICE) and Embassy. The workshop was led by USDOJ prosecutor, Marie-Flore Kouam, and two senior DHS ICE investigators, Tchen Sene, and Thomas Hipelius. Oliver Metzger from the US Copyright Office also participated as faculty. High-level support for IPR by the GON was exemplified by the attendance at the seminar of Hon. Justice Kayode Somolu, Chairman of the Nigerian Law Reform Commission, representing the Attorney-General and Minister of Justice; the Director General of the Nigerian Copyright Commission, Adebambo Adewopo; Deputy Inspector-General of Police (DIG); the Director-General of Standards Organization of Nigeria (SON), Dr. John Akanya; the Director-General of National Agency for Food Drug Administration & Control (NAFDAC), Professor Dora Akunyili; the Executive Chairman, Economic and Financial Crimes Commission (EFCC), Mike Nzekwe; the Managing Director, Nigerian Film Corporation, Afolabi Adesanya; the Executive Secretary, National Human Rights Commission; and the Director General, Legal Aid Council, L. Akinlami. Overall, there were 108 participants from the Nigerian Copyright Commission (NCC), the Economic and Financial Crimes Commission (EFCC), Standards Organization of Nigeria (SON), the National Food and Drug Administration and Control (NAFDAC), Nigerian

Customs (customs' anti-smuggling units and customs' border officials), the Nigerian Police, as well as investigators and prosecutors.

WORKSHOP GOALS

13. (U) GON officials listed several reasons why IPR enforcement efforts have been sub par in Nigeria - too many officials with little to no understanding of IPR, a lack of cooperation and communication between interested agencies, and the perception that IPR violations are victimless or less important crimes, especially in relation to the number of violent crimes occurring in the country. DOJ, DHS, and Embassy provided an interactive training to specifically address these issues, encourage cross-agency cooperation, and improve IPR enforcement efforts.

14. (U) The training included presentations on the basics of IPR, which emphasized the serious dangers of some IPR crimes, specifics about the Nigerian law enforcement system, investigative techniques of IPR crimes, raids, searches and seizures, and trial preparation. In addition to government officials, several right holders presented training to explain how they can assist the government in cracking down on IPR violators. These right holders included Pfizer, Inc., Wahl, Inc., IFPI for optical goods, two senior law partners from the Lagos firm of Jackson, Etti and Edu who represents several U.S. and local right holders, the Nigerian Publishing Association, and HI TV for satellite TV. Small interagency-group break-out sessions were utilized to further enhance communication among the various GON officials as well as highlight various methods for enforcing IPR.

15. (U) Participants told us that the course was successful in raising awareness as to the seriousness of IPR crimes, providing detailed investigative techniques for handling IPR cases from inception through prosecution, engendering cooperation among the respective GON agencies, and promoting good relations between IPR interest groups and GON officials. As one of the Nigerian participants noted, the workshop "opened his eyes" to the importance of IPR enforcement and was an "inspiration for fighting IPR crimes."

PROBLEMS REVEALED

16. (SBU) The workshop exposed recurring problems with Nigeria's IPR laws, including the provisions relevant to trademarks. The current trademark statute does not allow for effective criminal prosecution of trademark violations. These problems can only be addressed and resolved through legal revisions. Participants mentioned that an amended law is currently pending and that they are hoping it will soon be enacted. Hon. Justice Kayode Somolu commented that due to publicity from this IPR event, his organization, the lead agency for revisions of laws, would now seriously and more expeditiously push the enactment of an amended trademark statute for revisions. (Comment: the Attorney General's office has had the trademark statute "under review" for a long time with little movement. Somolu's remarks indicate that the Attorney General's Office understands the magnitude and importance of the problems with the current law. End Comment).

17. (SBU) Seriously hindering IPR enforcement is a lack of communication and cooperation between NCC, NAFDAC, Customs, SON and to some extent EFCC, which was further exacerbated by inconsistencies between each agencies' governing laws. The participants realized through the break-out sessions and scenarios that if they pool their resources and cooperate, they are afforded more authority to pursue investigations and prosecutions and can avoid some of the hamstringing caused by the trademark statute. They discovered that some of these limitations can be circumvented by using regulations from other agencies or fraud regulations. Several participants commented that before the workshop they had not known that cooperation with their sister agencies could be so fruitful and asked for contact lists (which were provided) to ensure that collaboration would continue beyond the classroom.

18. (SBU) Due to low compensation, some agencies suffer from corruption, higher turn-over and loss of institutional knowledge. Corrupt officials either misuse the system or transfer to other

non-IP positions to get promoted or leave the government to work for the private sector. All agencies agreed that magistrates (lower courts) and judges (higher courts) do not have sufficient knowledge of IPR to properly and efficiently adjudicate the current cases, leading to inconsistent judgments and delayed prosecutions.

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EFCC READY FOR PRIMETIME

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¶9. (SBU) The training revealed that by far, the EFCC is the most and perhaps only Nigerian entity at this point that has yielded advanced results in criminal IP enforcement. Though NAFDAC has shown actual results in IP criminal enforcement, NAFDAC investigations are not sophisticated enough to target the lead suppliers, or heads of criminal networks. The EFCC participants indicated that they were already using most of the techniques taught in the course, including tracing the proceeds of crime to the source of the criminal network, and infiltrating networks with undercover operations. Recently the EFCC successfully investigated a very complex IP Internet piracy case. The EFCC privately disclosed that their results were based on developing techniques to circumvent the risks of corruption or of tipping off the target. For example when the EFCC raids a target, the Nigerian team leaders (generally limited to two to limit finger pointing issues) do not inform the rest of the team on the details of the operation, on where they are going, why, and the type of investigation. The raid team will all get on a bus and be informed of their assignments only when they arrive at the location. At that point, it will be too late/useless to tip a target.

¶10. (SBU) The FBI attach in Lagos also commented that it has been very successful in partnering with the EFCC on several IP criminal investigations. Some EFCC participants informed us that the training was generally basic for them, but that it had helped them to increase cooperation with other agencies and review some of their knowledge.

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NEXT STEPS

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¶11. (SBU) First, and foremost, a revision of the trademark statute is required to close loopholes, empower the NCC and Customs with sufficient investigative authority, and provide the courts with guidance on IPR violations. Without such revisions, enforcement efforts will continue to be shackled and court rulings impeded by inconsistent laws.

¶12. (SBU) EFCC should be involved in all criminal IP trainings in Nigeria. EFCC participants should actually be the first agency to be considered when selecting "train-the-trainers" participants for Nigeria or follow-up trainings to the US. Further, the successes reached by the EFCC in criminal enforcement of IP could actually be shared with other countries on the continent, including South Africa. Because of their direct experience, EFCC participants should also assist US faculty when training on criminal IP.

¶13. (SBU) Lastly, magistrates and judges are in dire need of basic training on adjudicating IPR cases. Courts are often overwhelmed by the technicalities of IPR and must rely on experts to assist them in their final judgment. Specialized training would alleviate some of these problems.

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COMMENT

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¶14. (SBU) The success of this IPR investigative training seminar is a strong indicator that the Nigerian Government is giving greater attention to IPR and is willing to seek assistance to improve its enforcement efforts. It is noteworthy that Embassy and DOJ received full support from the main GON IP law enforcement agencies, as well as some of the IPR industry groups, in developing the training program. The NCC has already approached Econ Deputy and Kouame regarding future cooperation, continued investigative training, and other suggested programs. Even though the workshop was very successful, the USG cannot reasonably expect that without U.S. follow-up and supportive workshops, the Nigerian participants will be able (from just attending the workshops) to effectively implement all of the best practices for criminal IP enforcement that they

learned. To this end, USDOJ and Embassy plan to submit a joint proposal to INL for follow-up trainings to build on the progress accomplished thus far, including more involvement of the EFCC.

¶15. This cable has been cleared with USDOJ Marie-Flore Kouam.

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